

## Medical Health Series

# The Death Penalty For Juvenile Offenders

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Currently in the United States there are approximately 23,000 homicides each year. Ten percent of those responsible for the homicide are under 18 years of age. In fact, between the mid 1980s and 1990s, the United States saw a 168% increase in the number of youths committing homicide. To date, juveniles are reported to be involved in one out of six murder arrests and the age of those juveniles continues to fall.<sup>1</sup> This paper provides an overview of the death penalty for juveniles. The history of juvenile justice, current state legislation and Supreme Court decisions are reviewed.

## HISTORY OF JUVENILE JUSTICE

Recent studies have shown that 65% of youths in the juvenile justice system have a diagnosable mental illness.<sup>1</sup> Over the years, studies of juveniles who have been referred for psychological or psychiatric evaluation and/or treatment have indicated that certain risk factors present in a child's life increase the probability that they will kill. A juvenile's chances of committing murder are twice as high if; there is a family history of criminal violence, there is a history of abuse, the juvenile belonged to a gang or abused alcohol or drugs. The establishment of juvenile courts, in conjunction with preventive programs, developed partly as a result of these findings. The programs attempt to focus on creating healthy home environments and rehabilitation for juvenile offenders.<sup>1</sup>

In spite of these efforts, with the increase in the juvenile homicide rates and highly publicized school shootings as occurred at Columbine High School, the American public has demanded harsher punishments for the juveniles that kill. Some Americans have even advocated for the death penalty. A recent Gallup Poll, showed that 72% of Americans favored the death penalty in general; however, 26% supported it for juveniles. The poll also showed that, in historical terms, support for the juvenile death penalty has always been low.<sup>3</sup>

In the midst of the public's uncertainty, the death penalty for juveniles has also been an issue for courts and legislators. In 1987, the revision in the federal sentencing guidelines reflected the continued view that the juvenile justice system needed to be replaced by a more punitive system. As a result, certain offenses required immediate transfer of juvenile offender cases to adult criminal court. These new transfer provisions indicated juvenile offenders would be subject to the same punishments that adults would receive if found guilty of the offense, including the death penalty. The courts have long debated whether the imposition of the death penalty is constitutional under the 8<sup>th</sup> Amendment to the United States Constitution (cruel and unusual punishment). The Supreme Court has, to date, refused to prohibit all executions of juveniles who have killed. However, the Supreme Court has stated that offenders must be at least 16 before they can be sentenced to death.<sup>1</sup>

## CURRENT STATE LEGISLATION

Thirty-eight states and the federal government currently have statutes authorizing the death penalty for juveniles of certain types of murder. Of those states, 18 have determined that, at the time of the crime, the minimum age of eligibility for the death penalty is 18. Tennessee is included in this group of states. Five states have chosen age 17 as the minimum. The other 17 states use age 16.<sup>4</sup> Of the 22 states that permit the death penalty under age 18, only seven have carried out such executions. And of those seven states, only Texas and Virginia have used it more than once. In fact, Texas and Virginia account for 76% of juvenile executions nationwide. There has even been recent interest in those states to lower the age at which the death penalty would be permissible. In Texas, a state legislator urged adoption of the death penalty for children as young as 11 who commit capital offenses.<sup>2</sup> As of April 1, 2002, there were 83 death row inmates sentenced as juveniles. There have been 22 executions for juvenile offender crime since the reinstatement of the death penalty in 1976. This is approximately 2.5% of the total executions since that time.<sup>5</sup>

## SUPREME COURT DECISIONS

The United States Supreme Court has reviewed three cases in determining the constitutionality of the death penalty for juveniles. They are as follows:

*Thompson v Oklahoma (1988)* - Thompson, at age 15, was convicted of murdering his brother-in-law, in concert

with three older persons. His brother-in-law had been suspected of abusing Thompson's sister. Thompson shot him twice in the head and slashed his body before throwing it in a lake so the "fish could eat its body." The trial court had certified Thompson to be tried as an adult lacked any prospect for rehabilitating him. The case was appealed to the Supreme Court on the issue of whether the execution of a individual, who was 15 years of age at the time of the murder, violated the cruel and unusual punishment under the 8<sup>th</sup> amendment. The Supreme Court stated that the death penalty statute was unconstitutional when a state's death penalty statute failed to specify any minimum age for imposition of the death penalty (as was the case with the Oklahoma statute).<sup>6</sup>

*Stanford v Kentucky (1989)* - Stanford was 17 when he and an accomplice repeatedly raped, sodomized, and eventually shot to death a 20-year-old girl in 1981. The juvenile court had determined that it would be in "the best interest of petitioner and the community" for Stanford to be tried as an adult due to his repetitive delinquent behavior and the seriousness of his crime. On appeal, the Supreme Court upheld the death sentence of Stanford stating the 8<sup>th</sup> Amendment does not prohibit the death penalty for crimes committed at age 16 or 17 regardless of state statutory provisions. The Court found that the death sentence was not "contrary to the evolving standards of decency that mark the progress of a maturing society." In June 2003, the governor of Kentucky said, in a press release, that he would commute the death sentence of Stanford. The governor stated that the justice system "perpetuated an injustice" in Stanford's case.<sup>5,7</sup>

*Wilkins v Missouri (1989)* - Wilkins, age 16 at the time of the crime, stabbed to death a 26-year-old woman who was working behind a

convenience store counter. Wilkins told his accomplice that they would kill "whoever was behind the counter" because "a dead person can't talk." Wilkins pled guilty to the charge of "first degree murder, armed criminal action, and carrying a concealed weapon." He was sentenced as an adult due to the "viciousness, force and violence of the alleged crime, his own maturity and the failure of the juvenile justice system to rehabilitate him after previous delinquent acts." The Supreme Court upheld the death sentence by stating the 8<sup>th</sup> Amendment was not violated.<sup>8</sup>

### CONCLUSION

Because the problems of juvenile violence are so complex, solutions are not easy. Many Americans directly affected by juvenile crime believe that, when children commit murder, harsh punishment is justified. Prevention, by eliminating many of the underlying societal problems that contribute to this violence, seems too complex, too slow, too difficult, and too "soft" for the advocates of the death penalty for juveniles. Laws effecting juveniles have become tougher and courts have upheld the death penalty throughout varying states, however, the controversy remains.<sup>1</sup>

Many Americans opposed to the death penalty have argued that executing juvenile offenders does not fulfill the two purposes for the death penalty - deterrence and retribution. Even though the Supreme Court has held that executing 16- and 17-year-old offenders does not violate the Constitution, the Court has not openly and fervently endorsed the death penalty for juvenile offenders. States remain divided on the issues and have enacted laws that reflect the current concerns of their constituents.<sup>1</sup>

In summary, prevention and/or elimination of the risk factors that lead to murder by juvenile offenders always

be considered when trying to deter these types of homicides. In particular, identification and treatment of mental illness in this population is increasingly recognized as an important part of dealing with juvenile crime, particularly homicide.<sup>3</sup> Regardless of prevention and treatment, the type of punishment chosen by state legislators and the courts for juveniles who kill should attempt to deter future juvenile offenders, prevent repeat offenders and contribute to society's desire for retribution.<sup>1</sup> ■

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